

## **KDOL working with Revenue on Worker Misclassification**

The Kansas Department of Revenue and Kansas Department of Labor are working together to implement a new Kansas law to better ensure the proper classification of workers.

Worker misclassification occurs when an employer incorrectly categorizes workers as “independent contractors” rather than employees. Consequently, employers may not make appropriate withholdings or tax payments for their employees. Workers who have been incorrectly classified as independent contractors may lose access to unemployment benefits, workers compensation, social security and withholding tax.

The 2006 Legislature passed, and Governor Kathleen Sebelius signed, House Bill 2772 authorizing a penalty for the intentional misclassification of an employee as an independent contractor to avoid state withholding taxes or unemployment insurance taxes.

The law also allows for much greater cooperation between KDOR and KDOL in pursuing enforcement of the law.

The vast majority of Kansas businesses are abiding by the rules. They shouldn’t foot the bill for the employers who do evade the law, noted Secretary of Labor Jim Garner. “Businesses that intentionally misclassify workers put other businesses at a competitive disadvantage and this is not acceptable,” he said.

The new law went into effect July 1.

The law also allows KDOR to share taxpayer information with the staff attorneys at KDOL when intentional misclassification is suspected. A public education campaign is underway to help employers understand the law.

Auditors started enforcing the new law in August.

A Web site at [www.kdor.org/misclass](http://www.kdor.org/misclass) provides more information and gives Kansans a place to anonymously report potential misclassification issues.

The agencies will jointly investigate all tips provided through the site.

In the case of questions, KDOL has the responsibility for determining if a worker is an employee or an independent contractor. ★

## **When does misclassification occur?**

Some employers, in order to “save” money, will decide to classify employees working for them as “independent contractors.” While employers can hire independent contractors to do work for them, a problem arises when the worker is truly an employee and has been wrongly classified as an “independent contractor.” As a result they may not receive the protection of Employment Security Law, Workers Compensation Law and may not get proper credit for their Social Security or income tax.

For example, an employee gets laid off and files for unemployment benefits. After filing the application, the employee is told that the former employer had never paid UI taxes for that employee. The misclassified employee then must bear the financial consequences of having no job without the relief of unemployment benefits while an investigation is conducted on their claim.

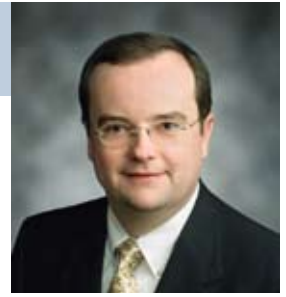
In another example, an employee is injured on the job and files for workers compensation. If the employer has not been carrying workers compensation insurance coverage because the worker was misclassified as an independent contractor, the worker’s entitlement to benefits may be jeopardized.

An independent contractor is responsible for paying self-employment taxes and there will be no employer contribution for F.I.C.A. (Social Security) and Medicare taxes. These taxes are required to be paid under the federal internal revenue code.

## **How do you identify misclassification?**

The difference between an employee and an independent contractor has to do with the right of control: does the employer have the right to control or direct the manner and means by which a person performs a service or services, whether or not they exercise it? An individual is an independent contractor if the employer controls or directs only the results of the work and not the means and methods of accomplishing the result. The right to discharge a worker at will and without cause is strong evidence of the right of direction and control.

Generally an employer-employee relationship is found to exist when the work being done is an integral part of the regular business of the employer and the worker does not furnish an independent business or professional service to the employer. Independent contractors most often offer their specialized services to the public (i.e., a freelance writer or handyman). ★



# Labor Day at the Department of Labor

Labor Day has become the last main event of summer – for many it is three days at the lake with family and friends or off on a short trip for recreation.

As Kansas families celebrate Labor Day in their individual ways, it is important that we recognize and acknowledge the contributions that working men and women make to our state and its economy every day.

KDOL has two major external customers – 70,000 Kansas employers and the more than 1.4 million workers in our state. Labor Day is a good time to take inventory of our agency's role in the Kansas labor market. Here is a sample of some of the things we do:

- Our *Labor Market Information Division* collects critical information on what is happening in the Kansas labor market – how many people are working, in what industries are they working, how many people are looking for work and what occupations are growing in demand. This is great information that can help workers and businesses making decisions about their future.
- Our *Employment Standards Unit* enforces various labor laws (such as child labor laws and the Wage Payment Act) to ensure a fair workplace. Recently the Kansas Court of Appeals upheld their finding of the largest award of unpaid wages in Kansas history, ordering nearly \$1 million in unpaid wages to 166 employees of a former Kansas company.
- Our *Division of Workers Compensation* administers the Kansas Workers Compensation laws and assists many Kansans with inquiries about the system. In the last fiscal year they processed more than 71,000 accident reports and 16,185 requests for hearings.
- Our *Industrial Safety Division* has been actively promoting safer workplaces in Kansas through workplace consultations and training services. They have helped certify 56 Kansas worksites with the prestigious SHARP (Safety and Health Achievement Recognition Program) designation. This makes Kansas one of the top states in the nation with SHARP worksites. That is an impressive achievement.
- Our *Public Employee and Employer Relations Unit* helps public employers and employees resolve their disputes in a timely and professional manner. Many folks are impacted by their actions.
- Our *Employment Security/Unemployment Insurance Division* processed 124,521 initial claims for unemployment benefits and provided over \$235 million in benefits to help qualifying workers in the past fiscal year. They also administered 70,156 tax accounts as of the 12 months ended March 31, 2006.

Each area of our agency works hard for the people of Kansas all year long. As many of you have heard me say many times, we directly touch the real lives of working families every day.

As you enjoy the long Labor Day weekend, take time to reflect on your personal contribution to the employers and employees working in Kansas.

Happy Labor Day!

# Investigating Workers Comp Fraud

Workers compensation is an insurance plan provided by the employer (by law) to pay employee benefits for job-related injuries, disability or death. In general, the present law applies to all Kansas employers with a gross annual payroll exceeding \$20,000. Some exceptions to this law include agricultural pursuits and unincorporated businesses with employees related by marriage or consanguinity.

To ensure accountability and enforcement of our state's workers compensation law, we have a group of employees dedicated to this task.

The Fraud and Abuse Unit in the Division of Workers Compensation is charged with identifying and prosecuting workers compensation fraud.

The unit's responsibilities include investigating complaints about abuse by employees who make false claims and employers who don't carry insurance or fail to make timely filings of accident reports. They do not investigate misconduct by insurance carriers and agents; that is the responsibility of the Kansas Insurance Department.

The staff includes an Assistant Attorney General (Kelly McPherron), three Special Investigators (Diana Doak, Jon Flippin and George Schureman) and an Administrative Specialist (Gina Rogers). McPherron also is part of the Criminal Division in the Attorney General's Office.

An employee receiving workers compensation payments can be charged with fraud or abuse if he or she makes false or misleading statements to obtain benefits, said McPherron. Employers can be charged for presenting false certificates of insurance or submitting a charge for health care that was not furnished.



*Fraud and Abuse personnel (left to right): George Schureman, Jon Flippin, Gina Rogers, Kelly McPherron and Diana Doak.*

Employers also can get into trouble by failing to file accident reports in a timely manner, which is considered as 28 days after an injury that causes whole or partial incapacitation to the employee.

When a complaint is made, either by mail, e-mail or phone from the public, or from internal sources, such as the Workers Compensation Coverage and Compliance unit, it is reviewed by McPherron, who then assigns an investigator to all cases with merit. The assignments generally are made according to region; the unit has an investigator for each third of the state, although they will help each other if the workload is heavier in one area than another, she noted.

The investigation usually includes interviews, research of data and then preparing an investigative summary and making a recommendation. According to McPherron, the recommendation is to either close the case or to file charges. Most determinations are made based on if the violation was made knowingly and intentionally. For example, she

said, some new businesses do not realize that they must carry workers compensation insurance. Criminal or administrative action begins when the Assistant Attorney General determines there is sufficient information to sustain the burden of proof in either a criminal or administrative action.

When charges are filed, most cases are handled through an administrative hearing before a hearing officer. Fraud and Abuse has two; both are attorneys in private practice who can remain neutral parties to the cases, she said.

Each party has the right to appeal – first to the Secretary of Labor and then to the District Court system. The penalties for workers compensation fraud and abuse are fines.

In the 2005 fiscal year, 317 cases were initiated and 85 were referred for administrative charges. Most of the referrals to the unit were because a business had failed to maintain workers compensation insurance when required, either by not getting coverage or allowing coverage to lapse. ★



## Staff Profile – Mike Wilkerson

UIM Project Manager for Information Technology is Mike Wilkerson. In addition to management on large projects like UIM, he also provides oversight on all of the agency's other IT projects.

### **What is your role with the UIM project?**

As Project Manager on Phase I, it was my job to ensure the project met the agency's objectives and was completed on time and within budget.

### **How long have you been involved in UIM?**

Since its inception.

### **What do you see as the major importance/benefit of the project?**

I have been involved with projects in both the private and public sector for nearly 20 years and I have never been involved with a project that has the potential to change the way an organization does things in such a positive manner. The project will have two equally important outcomes: 1) Overall enhancement to the way UI performs its operations that will provide improvements for claimants, employers and KDOL staff. 2) Modernization of our 30-plus year old computer systems to enable the improvements above and ensure the agency can respond to future changes.

### **From your perspective, what need(s) of KDOL will the project meet?**

The needs met by the project will be numerous. Essentially, they mirror my comments above and involve customers and KDOL staff. The project will meet the needs of our customers, claimants and employers, enabling them to receive KDOL UI

services in a faster, more effective and in a more reliable manner. The project will meet the needs of KDOL staff by providing modern tools and methods that will enable them to perform their jobs more effectively.

### **What has been your principle challenge with the project?**

Coordinating everyone's efforts – vendors and KDOL staff – to ensure all tasks are completed on time, on budget and deliver the highest quality possible.

*"I have never been involved with a project that has the potential to change the way an organization does things in such a positive manner."*

### **How is the project going? What progress? What's next?**

Phase I is currently complete. This has given us a very good, high level plan for what must be done to complete the next phase of the project. Currently, with the information obtained during Phase I, we are preparing a request for proposal (RFP) for the next phase of the project. This RFP will solicit proposals from vendors that will allow us to select the best one(s) to implement all the changes discussed during Phase I.

### **What have you learned about KDOL operations that you didn't know before the UIM project began?**

The most important thing I learned during Phase I is that we have a lot of dedicated KDOL staff that understand the need for a project of this



Mike Wilkerson

magnitude and that they are willing to do what it takes to make the project successful.

### **Any other comments or thoughts to share with the agency about the UIM project?**

Phase I is just the beginning, the hard work starts now. I would just like to encourage everyone to be as involved as possible when the opportunity arises. The experience will be rewarding for you and improve the overall success of the project. ★

If you are looking for more information about the [UI Modernization Project](#), updates are regularly posted on the KDOL Employee Intranet

# Did you know?

## There are KDOL PowerPoint Templates on the Employee Intranet

Microsoft PowerPoint is a tool to augment a verbal presentation with memorable graphics. Templates containing the KDOL logo and consistent style have been created for KDOL employee use. The templates are found on the KDOL Employee Intranet under Communications. You may download these templates to a location on your PC where you then can open them (open the file(s) from the Intranet and use File/Save As) and then revise the information in the PowerPoint template to fit your needs.

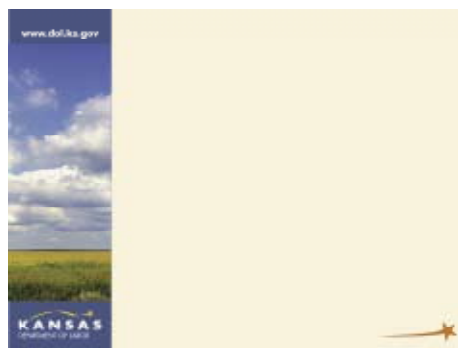
There are three style choices featuring the KDOL logo and Web address. Examples of the basic templates are shown at the right.

Font styles and colors are part of the templates. Do not change these styles. If necessary, you may increase or decrease the point size of the font; just be certain the type size will be readable when used.

If you have any questions, please contact Communications (785-296-0901 or 3369).

### General PowerPoint Guidelines:

Typically, people learn better with visuals – when words are narrated



rather than solely read from the screen, when extraneous material is removed and when graphics and words are presented rather than words alone. In other words, we learn better when we hear and see the message in multiple ways.

PowerPoint slides should not be used to explain information in great detail on the slide. If you want to convey dense information, leave a written document behind. When using a PowerPoint presentation, less is more.

In PowerPoint, you can create charts and import graphics into the slides. You can keep your entire presentation in a single file – all your slides, speaker's notes and handouts. You can import text and information from other Microsoft applications, such as Word.

Do not let all these possibilities go to your head. Experts recommend that you try to keep the presentation to 10 slides in a presentation planned for 20 minutes in length. Also remember to keep the type size large enough to be read by the entire audience.

There are additional guidelines on the Intranet site. ★

### What's with all the underlines in the *Inside Source*?

When you are viewing the electronic version of the *Inside Source* on the Internet, an underscore indicates a link to another Web site or to an e-mail address. They are placed there for your information and convenience. ★

Do you have an achievement or an honor (personal or professional) you would like to share? Please submit it to the editor. Items used will be determined by Communications and are subject to editing and space availability. ★

## It's a Pain

Do you have pain in your legs or lower back? You could be one of many people who suffer from **sciatica**. The term “sciatica” refers to pain that radiates along the path of the sciatic nerve — from your back into your buttock and leg. The sciatic is the longest nerve in your body, running from your pelvis through your buttock and hip area and down the back of each leg. It controls many of the muscles in your lower legs and provides feeling to your thighs, legs and feet.

Sciatica is commonly caused by sitting for long periods of time in a chair that is too high to allow the feet to rest flat on the floor, causing pressure on the nerve.

Men often suffer from sciatica due to pressure from sitting on the wallet in their back pocket. The wallet presses on the nerve which can eventually cause pain or numbness in lower leg, ankle or foot.

Because of the design of car seats, sciatica can occur while driving for long periods of time.

Maintain proper posture when you sit. A good chair should comfortably support your hips and the seat shouldn't press on the back of your thighs or knees. If the chair doesn't support the natural curve in your lower spine, place a rolled towel or pillow behind your back.

When working at a computer, adjust your chair so that your feet are flat on the floor and your arms rest on your desk or the chair's arms, with your elbows bent at a right angle. Take frequent breaks, even if it's just to walk around your office. Add a foot rest to your workstation. Try using a ream of paper as a foot rest to see if it makes a difference.

When you drive, adjust your seat to keep your knees and hips level, and move the seat forward to avoid overreaching for the pedals.

It is recommended that men take their wallets out of their back pocket and put it elsewhere, such as a shirt pocket.

## The New Call Center

Contractors are developing bids for the renovation of the new Call Center space. Some “before” photos are shared here.

To the right is the entrance area; note the curved mosaic tile wall. Below, the dining room (left) and the kitchen (right) will be remodeled to become the main area for the Call Center.





# Employee Updates

## New Employees



**José Colón-Morales** has joined IT as an application developer III. He is originally from Puerto Rico. He has two grown sons,

David and Robert, and enjoys reading, writing poetry and Ping-Pong.



**Jon Flippin** is the new special investigator in the fraud and abuse section of Workers Comp. He is a native of Southern

California and came to Kansas through the U.S. Army. He attended Cloud County Community College, the Kansas Law Enforcement Training Center and is currently completing his degree through Friends University. His wife teaches at Lawrence High School and they have two children and two dogs.



**Judy Nicholson** is at the Topeka Call Center where she is an administrative assistant. She is from Delia and has a son. She is a collector of

stamps, coffee mugs and Cherished Teddies.



**Sonya Graf** also is an administrative assistant at the Topeka UI Call Center. she enjoys reading and baking.

**Dena Walrod** is an administrative specialist in the UI Research unit of LMIS. She is from Mayetta and has two dogs, a



## Service Awards

September 2006

*10 years - State*

**Tina DeLaRosa** Program Consultant I, Communications (Topeka)

*20 years - State*

**Deborah Schultz** Administrative Assistance, Benefits (Topeka)



Special congratulations to **Jim Huttenhoff**, labor conciliator in Employment Standards. He was among 61 state employees who were recognized by the Governor at a reception for those attaining 40 years of service with the State of Kansas. His anniversary was in April.

*New Employees, continued*

ferret and a cockatiel. She enjoys outdoor activities and collecting Kachina dolls and arrowheads.

## Compliments

**Steve Zink**, Industrial Safety & Health

You have a great program and a fantastic bunch of people working for you. Thanks again for all your help.

~ Consultation recipient

**Rebecca Sanders**, UI Appeals

On behalf of NAUIAB (National Association of Unemployment Insurance Appellate Boards), I want to extend our sincerest appreciation for your presentation at our 2006 Annual Conference in San Diego, CA. Your presentation provide our participants with invaluable information that they can take home and apply to their day-to-day responsibilities.

~ NAUIAB Conference Agenda Co-Chair

**Shirley Mick**, UI Benefit Payment Control

Our situation was complicated and required extra attention to resolve. Shirley was able to calm us and kept us up to date on the situation until it was resolved.

Thank you for providing excellent service in our time of unexpected need for unemployment. It is an organization (and people like Shirley) who work to resolve the issues that set themselves above the others!

Please check the KDOL Employee Intranet under Human Resources for information and to register for upcoming training opportunities.

The *Inside Source* is published monthly by the Office of Marketing and Communications, Kansas Department of Labor, 401 SW Topeka Blvd, Topeka, KS 66603, for employees of KDOL. Please submit newsletter ideas and retiree change of address information to the Editor, 785-296-3369 or e-mail.